

305 ~~[(c) the municipality or the municipality's affiliated governmental entity owns or~~  
 306 ~~creates; and]~~

307 ~~[(d) (i) either:]~~

308 ~~[(A) no person uses or occupies; or]~~

309 ~~[(B)]~~ (c) the municipality or the municipality's affiliated governmental entity uses and  
 310 occupies to provide a utility service, including sanitary sewer, culinary water, electrical, storm  
 311 water, or communications or data lines; ~~[or]~~

312 ~~[(ii) a person uses or occupies with or without an authorized franchise or other~~  
 313 ~~agreement with the municipality:]~~

314 (d) is used or occupied with the consent of the municipality in accordance with an  
 315 authorized franchise or other agreement;

316 (e) (i) is used or occupied by a specified public utility in accordance with an authorized  
 317 franchise or other agreement; and

318 (ii) is located in a utility easement ~~H~~→ [dedicated] granted ←~~H~~ for public use; or

319 (f) is described in Section 10-9a-529 and is used by a specified public utility.

320 ~~[(40)]~~ (41) "Nominal fee" means a fee that reasonably reimburses a municipality only  
 321 for time spent and expenses incurred in:

322 (a) verifying that building plans are identical plans; and

323 (b) reviewing and approving those minor aspects of identical plans that differ from the  
 324 previously reviewed and approved building plans.

325 ~~[(41)]~~ (42) "Noncomplying structure" means a structure that:

326 (a) legally existed before its current land use designation; and

327 (b) because of one or more subsequent land use ordinance changes, does not conform  
 328 to the setback, height restrictions, or other regulations, excluding those regulations, which  
 329 govern the use of land.

330 ~~[(42)]~~ (43) "Nonconforming use" means a use of land that:

331 (a) legally existed before its current land use designation;

332 (b) has been maintained continuously since the time the land use ordinance governing  
 333 the land changed; and

334 (c) because of one or more subsequent land use ordinance changes, does not conform  
 335 to the regulations that now govern the use of the land.

- 1018 (2) As a condition precedent to judicial review, each adversely affected  
1018a ~~H~~→ [person] party ←~~H~~ shall  
1019 timely and specifically challenge a land use authority's decision, in accordance with local  
1020 ordinance.
- 1021 (3) An appeal authority:  
1022 (a) shall:  
1023 (i) act in a quasi-judicial manner; and  
1024 (ii) serve as the final arbiter of issues involving the interpretation or application of land  
1025 use ordinances, except as provided in Title 11, Chapter 58, Part 4, Appeals to Appeals Panel,  
1026 for an appeal of an inland port use appeal decision, as defined in Section 11-58-401; and  
1027 (b) may not entertain an appeal of a matter in which the appeal authority, or any  
1028 participating member, had first acted as the land use authority.
- 1029 (4) By ordinance, a municipality may:  
1030 (a) designate a separate appeal authority to hear requests for variances than the appeal  
1031 authority it designates to hear appeals;  
1032 (b) designate one or more separate appeal authorities to hear distinct types of appeals  
1033 of land use authority decisions;  
1034 (c) require an adversely affected party to present to an appeal authority every theory of  
1035 relief that it can raise in district court;  
1036 (d) not require ~~an~~ a land use applicant or adversely affected party to pursue duplicate  
1037 or successive appeals before the same or separate appeal authorities as a condition of [~~the~~  
1038 ~~adversely affected~~] an appealing party's duty to exhaust administrative remedies; and  
1039 (e) provide that specified types of land use decisions may be appealed directly to the  
1040 district court.
- 1041 (5) If the municipality establishes or, prior to the effective date of this chapter, has  
1042 established a multiperson board, body, or panel to act as an appeal authority, at a minimum the  
1043 board, body, or panel shall:  
1044 (a) notify each of its members of any meeting or hearing of the board, body, or panel;  
1045 (b) provide each of its members with the same information and access to municipal  
1046 resources as any other member;  
1047 (c) convene only if a quorum of its members is present; and  
1048 (d) act only upon the vote of a majority of its convened members.